PRESS INTERVIEW WITH J. ALAN BEESLEY, VICE-CHAIRMAN, CANADIAN LAW OF THE SEA DELEGATION, JULY 25, 1979

I think you know that I am not even certain that we have any hard news at all. There may be - it depends how you perceive the developments, but I wanted at least to make clear that I am (we are) available to meet with you. So do you have a preference as to whether we speak off the record or for the record?

Coletti, CP: Well myself, like what we did last year. It is so complicated you know. If you want to go into real detail. I would like the tape later. Anyone can do what they want here. You know, the one on one basis later. Preferably for something that I could take a week or so to study over to see all the angles, any differences from last year.

J. Alan Beesley: So you would rather that we have a rather broad brush approach?

Coletti, CP: Whichever way you want to do it, but everyone here has their own individual way of doing things.

J. Alan Beesley: Well, I am willing to do it the other way and go on the record and then tell you when I go off.

Let me begin then with a very broad brush approach, and this may be something you have heard before, but I want to mention it again, and that is the nature of the whole exercise. It is a very radical restructuring of the law. I think radical is a mild word to use. It is almost revolutionary in the sense that we use the term with respect to the French

Revolution and the American Revolution. I would not apply it to the Russian Revolution because I think this Treaty will liberate a lot of the peoples of the world with respect to resources and other rights which they will acquire, including the right to enjoy the environment without fear of having it degraded, the right to participate in the harvesting of the living resources of the ocean without having them scooped up by just a few wealthy states. So I think that it is a very radical restructuring that is occurring.

I said to some of you in the past that I believe that what we are doing was analogous, in a sense, to what occurred about 350 years ago when Grotius and Selden were having their classic debate. I will not go on about that, but the fact is that they then were hammering out, for the then international community - mainly European - how they wanted the Law to develop; essentially, whether there would be broad areas of jurisdiction appertaining to coastal states or narrow jurisdictional limits, and the arguments then were not too different from those now in some respects. The narrow limits people, argued by Grotius, won the debate, and the reasons were, I believe, functional. It reflected the needs of the time and the classic statement which we use - I think that we were the first in the Conference to ever use it - but it has been repeated by so many people in other contexts; it was Grotius' own statement that the resources of the sea cannot be exhausted by any of the uses known to man, etc., etc.

Well, that is not the case anymore and that is why we have always approached this Conference, and some of the related Conferences such as the Stockholm Environmental Conference and the London Dumping Conference and a series of IMCO Conferences, with this in mind, that we have to now reflect the new uses of the sea, and the Treaty that we are drafting is intended to regulate all the many uses of the ocean. Some of them are so new that we hardly yet understand all of their implications. I am talking not only about deep seabed mining, for at least we have had successful experiments conducted, but some of the knowledge that has been gained about the earth's crust and some of the metals that are available on the sea bed other than manganese nodules, etc. But, in addition to that, I do not want to harp too much on an issue that I feel strongly about, but again and again we find - almost as if somebody up there is directing it all - every time we meet we arrive to find that there is either a big blowout like Santa Barbara or a Yucatan blowout or a tanker collision. I assure you that the Canadian Delegation does not orchestrate it, but we are often accused of it because we are always warning of these things. Well, be that as it may, a number of delegations including certainly the U.S. Delegation and the Canadian Delegation and more recently the French since the Amoco Cadiz incident, have attached great importance to the

preservation of the marine environment. That was a problem that Grotius did not have to worry about. To quote my own propaganda so to speak, in the good old days when a ship went down, as the flag went beneath the surface so did the flag state jurisdiction disappear. Well now that is not good enough because somebody has to clean up the mess, and we have developed now a whole network of rules of law. Not simply pious platitudes, but rules of law which will bind countries to act in certain ways. I think, if we have done nothing else, this would have made the Conference worthwhile. So, that is the background.

I believe that in both cases looking back 350 years and looking to the last ten years, we have found pressures for expanded coastal jurisdiction for certain purposes. In the good old days it was more for customs, military purposes and to some extent resource purposes. But the agreement then reached was on the fundamental principle of freedom of the high seas coupled with the principle of State Sovereignty but limited very strictly to narrow marginal belts. That lasted for about 300 years until it started to become unstuck. That is the background in any event, and what we have been up to is not just the shuffling of the deck so to speak. We are developing totally new cards.

Whereas we did have an agreement that the territorial sea was something between 3 and 12 miles, but possibly existing out to 200 in the eyes of some states, now we do have a virtual

consensus, and we will have one at the Conference [illegible] a 12-mile territorial sea. That is a very significant development in itself because of the implications for freedom of navigation - and they are military as well as commercial. Coupled with that is a provision that again is quite a major alteration from the pre-existing law relating to passage through international straits. The previous rule, you will recall, was suspendable innocent passage. That is no longer the case. The concept now is freedom of transit, which is a much broader right, and so on right through the list.

I do not know if you want to take the time, some of you perhaps do not, but the 200 mile limit - everybody knows how radical it is. Everyone knows how a few years ago it was still being protested vigorously in many ways, not merely limited to diplomatic notes. Now, because of the compromise called the Economic Zone, we have a 200-mile limit actually in force. The Conference provided the legal basis for the action that has been taken by states. Always, since time immemorial, what international laws we have have been developed as much by state practice as by treaty law. In this case the two have coalesced, as happened in an earlier case with respect to the Continental Shelf Convention. It happened again with respect to the 200-mile limit. You know what the compromise is. It is fisheries jurisdiction plus marine pollution jurisdiction - carefully defined jurisdiction - marine scientific control, which has not yet been fully worked out, plus resource jurisdiction with respect to the seabed as

well as the resources of the superjacent water column. No jurisdiction over the water itself. It is a very functional approach. It is one that we amongst others have argued for for years, and it is a very big concession for the territorialists to accept it. No small thing at all. I think that it is worth bearing in mind because there still is a territorialist group which meets, and I think you would find them meeting rather more actively and intensively if the Conference were to fail, and they are a pretty powerful group.

With respect to other issues, even on internal waters, we have made changes - unusual ones. The concept of port state jurisdiction which is part of the package with respect to marine environment solution is quite a novel one. I will not bore you with the details of it, but the combination of port state jurisdiction, coastal state jurisdiction and flag state jurisdiction is, I suppose, a classic example of an accommodation of interests based on the need to reflect new uses as well as old uses of the ocean.

I am sure that you are all aware that running through our negotiations too have been sharp disagreements also over the nature and extent of coastal state jurisdiction over the Continental Shelf. Well, we are now near the end of that process as a result of what happened in Geneva, and I will offer a few words about Geneva in just a few minutes, because

I think I have said enough about the straits. But the margin too has been a very important issue. It is a Conference breaker, and it became apparent pretty early on that a number of states have no intention of ever signing a Treaty if it meant that they were restricted to 200 miles for all purposes. It is a substantial number but it is also a very influential group of states. On the other hand it was quite evident that some states felt that this was an inequitable approach and they could not accept this if there were not something intended to reflect equity as well as acquisitiveness and we recognized that. We were either the first-or, if you want to characterize the Nixon proposal as a revenue sharing approach which it is, that was the first. But qua revenue sharing we were the first to recommend it and it is now part of the conventional wisdom, so to speak, of the Conference. That is, if a state has claimed beyond 200 miles there will be revenue sharing with respect to seated resources beyond 200 miles, and as you all know there is no claim with respect to the water column beyond 200 miles. I am talking about the resources <u>in</u> the water column. It sounds like a very nice legal distinction, but it is a very real one for the navies of the world, - whether you have jurisdiction <u>over</u> the water column or <u>within</u> the water column. Quite a different thing. So we picked our way through this kind of collection of legal, military, political, and economic obstacles, and we have come up with a very ingenius solution. When I say "we" I mean

that while some of the attitudes are more than developed countries, I detect it not from the Third World countries, and this is one of the most important aspects of this Conference. Some of the best brains in the Conference are quite clearly from the Third World, and I have felt throughout the Conference that it is a very dangerous mistake to assume that the radicals are in charge. They never have been. But by assuming that, we can put them in charge. I am not just talking about the Group of 77. In the case of developed countries, it is easy to have the conservatives in charge, and there are some delegations who might even prefer no Treaty at all. I believe they have misread their own national interests. To date we have not found either extremes controlling the Conference, or really affecting it radically or markedly. The power ebbs and flows because no group is static. The dynamics of the Conference are always at work.

Against that background, you know from previous sessions that we gradually were plowing away and working out solutions on passage through straits, on the 200 mile limit, on some notion of how to solve the Continental Shelf issue, on the host of questions relating to seabed beyond national jurisdiction. All we began with was with a slogan, a concept, namely, the common heritage of mankind. As a short digression it is worth noting that in 1967 there were two important initiatives, not just Malta's. Malta took the

initiative on the common heritage. But that same year the Russians launched an initiative based on a 12 mile territorial sea coupled with a high seas corridor in international straits. It is an interesting yard-stick that is still applicable today. You are reflected throughout the Conference the basic preoccupation of the developing countries, the common heritage and a sharing of the resources of the 200 mile limit, - the landlocked for example as well as the coastals like Malta; on the other hand, the preoccupation of the major Maritime powers with other things as well. Neither excludes the other. The Russian approach was based on freedom of navigation, basically. That preoccupation motivates them to this day.

Well, in Geneva we did achieve some progress that I believe raised the possibility for the completion of this negotiating process. Had we not gone as far as we did in Geneva, the Conference might already be dead. I heard several people say at a breakfast meeting that I held the other day, yesterday, that had we not made the progress we did in Geneva, we would not be here now. There would have been no meeting. So, although we are always saying this looks like the make or break session, there is some truth in it, because each time we get over another huddle, or two. Rarely do we have anything that has a lot of "sex appeal", but each time we have made progress enough to warrant another

crack at what remains.

In Geneva, firstly, we produced a new text. It sounds like something optical. It is not, because there are too many interests at play in the Conference that will head off any new texts unless there are some real compromises - or accommodations - I think that it is better word, - reflected in any new text, and it had not proven possible at the two previous sessions to get agreement on a new text. In Geneva it did prove possible, as is usually the case in the UN, after midnight, at the closing session. That was a fascinating exercise. But what happened was this: agreement was reached, if one can use that term definitively. Let's just say that it was accepted in Plenary that it would be left to the so-called Collegium, the President and the Chairmen, to determine whether to have a revision, and what would be in it on the basis of the Plenary debates which, in turn, reflected all the negotiations that have gone on in Geneva and in previous sessions.

Well, what had gone on was enough to warrant a new set of articles on the outer limits of the Continental Shelf for the first time, and there had been years of negotiations on that. What finally happened was a compromise between the Russian proposal for simple cut off limits and the Irish proposal, which is much more complex, and based on the physical nature of the Continental Shelf - the sedimentary test. The two approaches were married, after

months and months of negotiation. [illegible] played a very constructive role [illegible] vital interest in that and [illegible] ed at it. In any event, that was an important achievement. I hate to use this kind of word, but I think it was a historic [illegible] because it also [illegible] all [illegible] land-locked problem. As a result there is a new text based on those proposals on the [illegible] revenue sharing, at a pretty high rate of [illegible] the top, - a sort of well-head value rather than [illegible]. There may be difficulties on [illegible] text. This made it possible to put in the provisions relating to the landlocked and geographically disadvantaged, and they had been hung up for some time, although the two groups were not really the only two in the Conference negotiating on this question. It was generally accepted, at least implicitly - and explicitly in the case of Canada - that there was no agreement on the landlocked problem until there was agreement on the margin. Other countries took that position, and we managed to get agreement on both - or enough agreement sufficient to put it into the text. So far we have never gone back and eliminated anything from the text.

Questioner: (Business Week) Could I just ask where does the Arab group come in?

JAB: Well, the [illegible] but they did say that they [illegible] them.

Questioner: They will [illegible] think?

JAB: We do not know. I am being totally frank with you there. If you find out, I would like to know.

Questioner: I am told they will.

JAB: Well that is interesting. I hope that is right. If I ask them I might create an idea in their minds that there must be something wrong with it or I would not have to ask. Not that they are uninformed, but they do not get individually any benefits from this provision, and that is bound to affect their approach, just as Germany does not get any benefits from the 200 mile limit. Therefore, Germany is not quite as enthusiastic about a Convention perhaps as it might otherwise be. That is understandable, but of course the Convention has something in it for everyone, especially for anyone who is interested in a stable world order, or contributing to the gradual development of a legal structure within which nations can agree or disagree, as we do on the national plane.

Well, what went on in Geneva is that, to start with, two important provisions went in. Interestingly, something that we had not thought would happen as quickly, occurred: it was agreed that Committee III under Yankov of Bulgaria, had finished its work on marine pollution, and although there is no agreement that that subject could be handled separately from everything else that went into the text, and rather more to the point, it was accepted that it was most unlikely that we would reopen that subject. Now, it could be reopened; I know some states would like to reopen some questions, but it would be frowned upon, to put it mildly. We could reopen it if certain tendencies continue. For example, in IMCO, after we worked out a compromise in the Law of the Sea Conference, some of the major shipping states launched a little initiative in IMCO which I interpret as designed to erode one part of the compromise, namely, the port state jursidiction aspect, and that IMCO initiative has not yet run its full course. But if if does appear to erode the compromise, then we will have to go back and say one of the fundamentals no longer applies. I am hoping that the countries in question will check their impulses, so to speak, on that one, because it has been a reasonably fair accomodation of interests in Committee III on marine pollution.

Now turning to Committee I, we did get new provisions on some very important aspects of the whole question of the resource policy arrangements. We got a new text that emanated

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primarily from Frank Njenga, who did a terrific job. We got a new text on financial arrangements, both for the Enterprise and with respect to contractors, emanating from Tommy Koh's group, who has also done a fantastic job. We got some further provisions on the production ceiling; the previously negotiated ad referendum agreement between the Canadian and USA Delegations went in, but with some additions which were negotiated in Geneva, four important additions that did not amend the basic agreement, but added to it in ways that made it more acceptable to the US and the other major industrialized countries.

To summarize Committee I, there was nothing that stood out as a great breakthrough as one could say with respect to Committee II or Committee III but there was progress on everything. On the composition of the Council, the whole decision making process, things did not quite jell in Geneva, not, I think because there had been sudden new hard positions, but because new ideas were beginning to be floated which had not yet been absorbed enough for reasoned responses to be made. That seems to be happening at this session. This is Paul Engo's personal responsibility, quite apart from his overall responsibility as Chairman of Committee I. But if my own perceptions are correct, we are now well getting into the process of resolving extremely important issues on a highly controversial question, the composition and voting of the Council of the Authority because a lot of provisions can be looked at one way if you have confidence in the decision

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mining process and in quite a different way if you do not have confidence. It becomes terribly important for anyone who has a real economic interest, from any point of view. From the point of view of the common heritage or as a potential miner or as a land-based producer whose interests will be affected by what comes out of the seabed. It becomes extremely important to know how decisions will be made and whether it will be a system that will ensure both efficiency and some concept of equity and, of course, something else - a reflection of the real interests at play, which include geographical representation but also include economic interests; major consumers, major land-based producers, countries that are simply going to have to fend for themselves. They all have to be protected and we are deeply into that now, and things are going rather well. I think the tone and, - this may sound silly perhaps but it makes a difference - it is not so much the effect on delegates but what it indicates - the level of debate is high. The delegates are making thoughtful presentations, obviously aimed at seeking solutions rather than simply hammering the other side.

Incidentally, Paul Engo has conducted the main part of the negotiations to date in Committee I extremely skillfully at this session.

[illegible]: Excuse me, Mr. Beesley, on this particular point last week we had a press conference by Mr. Richardson where the style seemed rather confrontational -"If you do not do this, do not think that we will do that, then you better get this into your head"and from what you are saying this is a week or so and things have gone much smoother than anticipated. Is that so?

J.A.B. Well, firstly you would not want me to make a judgement on Amb. Richardson's style, confrontational or otherwise. Are you saying he indicated a confrontational approach? Either way, I would not comment on that. I would just say that perhaps my perception would be different from his, for understandable reasons. On some issues we are on the other side of the fence, such as the production ceiling, but we are almost both at the same point now. We are much closer that we were before. But, in spite of that possibility of differences in perception, I do not believe really there are fundamental differences in perceptions. I have had a number of consultations with Amb. Richardson and I believe he would say what I am saying, namely, not just that the mood is good. Who cares about a mood? Well, it can affect the way people react. I think he would agree that in the week since then, there have been, not so much of a series of agreements that represent concrete progress, but rather that we are working in such a way that indicates that we are moving towards agreement. It is

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very difficult to make predictions because the issues are very very difficult. How do you ensure that the major industrialized countries, who want the right to go out and mine in order to make the resources at their disposal, will be protected? Do you have to give them some kind of veto? If so, how do you do it? One of the ideas going around, for example, and it is not a totally new one, but it is new in the way it is being presented, - for instance, its authorship is anonymous. When you get an anonymous text it is a good sign. It suggests that someone thinks they have got the basis around which we can work out an agreement but they do not want to kill its chances by having it linked with any one interest group or any one delegation even. Indeed, this is, as you probably know, a traditional technique; not perhaps a traditional, but a very useful technique, used in this kind of negotiation where, if you cannot get agreement, you float something that occupies the middle ground and then the people who were content until then to reiterate their monologues about their preferred positions must react. This happened only a few days ago. There is always a feeling you know, in this Conference, which I do not necessarily share, but of which I am aware, that we do not do as well in New York. We do better in Geneva. Why that should be, I do not know.

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Q. You were about to tell us something I think more concrete you said not by your veto but by something else?

J.A.B. All right well, one of the ideas is that instead of saying that there will have to be agreement between this group and that group reflected in any decision, - the two major economic groupings - which is one of the approaches being put forth by some of the industrialized countries, there is an idea that has come out of the Group of 77 that is not truly a Group of 77 proposal, that decisions must not have more than a certain number of negative votes for it to pass. Then the difficulty will be in agreeing on the number of negative votes. It will look a bit like a veto. So it has to be very carefully drafted, and the number has to be very carefully negotiated, and I do not know whether that will prove the solution or not, but that is what is being discussed.

On other issues, we are still circling around each other a little bit; on the continental margin question, because even though we have a new text we have to discuss a lot of technical questions which have political implications relating to ocean ridges, and one relating to a problem of Sri Lanka which does have a continental shelf which does not happen to be covered by the particular definition. There is also problem of revenue sharing; for example, if we take 7% off the top, Canada might be quite willing to accept that in

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terms of its willingness to be as generous as anyone else, but in some areas of our shelf, and this applies to some other countries, there will just never be any exploration or exploitation if you have to take 7% off the top. It is extremely deep water, cold water, bad weather conditions, everything you have got in the North Sea ten times over. So in a situation like that, some kind of special arrangement will have to be worked out. Otherwise, the area will just never be developed and I do not really think anyone would object to some kind of special safeguard provision, provided that it is clear that proportionally the international community would get as much as it would get if you could do it at the same cost as in easier conditions. That kind of thing has to be worked out and as you pointed out yourself where do the Arabs stand? We don't know yet.

Questioner: Well, do they not say that they believe in the common heritage idea or that is their reasoning for not wanting it beyond 200?

J.A.B. Uh huh. Yes

Questioner: I know, but does not Sri Lanka have a Continental Shelf?

J.A.B. It does have a Continental Shelf but for peculiar geological and geographic reasons the technical formula, the combination of the Irish and the Russian formula that is

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being included in the text does not serve Sri Lanka's situation. So the question arises whether we try and make a special provision for a unique situation or must also to do. This is the kind of thing that will not ever appear on the notice board. There is just a series of very intensive consultations amongst technical experts, cartographers, resource management experts and others on these questions of ocean ridges, on the question of what I call the Sri Lanka case-not the Sri Lanka problem-but the Sri Lanka case, I suppose, and other somewhat technical questions relating to revenue sharing, which are also highly political. Underlying all this too is the recognition that neither the USA or USSR is happy with the present text on marine scientific research, but there too some ideas which have been reduced to writing are floating about very informally. I'm giving a purely personal impression. I do have the impression that issue can and will be resolved at this session. I would not want to put money on it but I think that we have a good chance of being able to resolve that one.

Questioner: Could you say how?

J.A.B. No, for lots of reasons.

I think there is a way around that problem.

I am not sure to what extent you would like to go into the specifics of Committee I or what remains in Committee II. Delimination remains unresolved.

The Conference is split with the middle on the states delimit their boundaries vis-à-vis the sea. Countries as friendly as Canada and the United States had such difficulty resolving bilateral boundary problems that they have agreed to set up a special panel of international court judges to resolve the difficulty. I hate "all agreed". It is not quite so. An agreement has been worked out ad referendum. It has not been ratified by the Senate although I think I am correct in saying that it has been approved by the Canadian Government, the previous Canadian Government. I do not know if it has been approved by the new Canadian Government. But that I think illustrates the complexity and the difficulty in resolving territorial issues between neighbours and, as a consequence, some states new to the pre-existing rules of law - the equidistance priciple - while some take a different approach. I've talked about 'special circumstances' or other phrases meaning a different approach than pure equidistance. That issue could wreck the Conference. I do not think it will and I certainly hope it will not. The only way to settle that may be by vote. It could be very bad because if you start voting on one thing you are going to put someone's nose out of joint and they will force a vote on something else and we will all start punishing each other and the whole thing will go down the drain. The

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[illegible] group [illegible] third but in fact they have played a very constructive role. I wish they were not simply counted as [illegible] numbers, including some of our friends, [illegible] have made everybody aware of what is involved, what is implied in the whole concept of voting. They are [illegible] as a blocking third. Therefore, you do not vote [illegible] anything. Therefore, quite aside from equity and reason and common sense and all the rest you have [illegible] for making an accommodation with them. If you do not, they can kill the whole Conference.

Now I have told most of you before, I think, about how strongly I feel about success or failure of the Conference. In a word I think we would have chaos if the Conference fails and far worse chaos than we had when we began. I know it is commonly alleged in that old joke about who were the first professionals: somebody finally said well, before that there was chaos, and the lawyer said who do you suppose created that? But in this case we began the Conference with a chaotic situation - claims, counter claims, conflicting points of view that, in some cases, involved near breaches of the peace and in some cases contributed to what some would regard as mild or serious breaches. The Iceland/U.K. dispute was not a pleasant one and the dispute over seabed resources between Turkey and Greece had some consider-

[illegible] influence on what [illegible]. [illegible], now we have, I guess, 60% of the Treaty in place and if we can finish the job we will [illegible] over a period of years. It sounds like a long time probably to all of you sitting around here. Certainly, it seems like a long time to me. But in terms of [illegible] one developed and the time it usually takes to develop new principles, it is just sort of a flick of an eye actually as a time span, because we did not [illegible] of preparation by the International Law Commission which other major law making conferences have had. We started from scratch and we decided not to give it to the law making organ of the UN, the International Law Commission. We made the conscious decision to create a Committee out of Committee I of the UN, (the old Seabed Committee) because we knew that, not only was this a highly political issue, but that we were going to be striking out in new directions. At least many of us were determined to do that. Some were not. I think that if we can just go that extra distance and actually complete the Treaty, it will not just be a shot in the arm to the UN, but it will be very significant contribution to, - well I hate to use such phrases, - to world peace. There will be a positive contribution because even where states have disputes there will be dispute settlement procedures laid down. This is another achievement in Geneva that I should have mentioned.

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We produced rather horrible, in many ways, [illegible] provisions. There are still some loopholes that have to be put in place.

The alternative, I think, is just disastrous because we would find some states saying that "whatever is in that Treaty represents the law". The next maritime power would say "even though we did not agree on everything and pin it down, nevertheless now that transit passage is the rule for an international strait". Others would say "Oh no, it is the old law that applies, namely, suspendable innocent passage." If the first state were also insisting that freedom of the high seas applies on the deep ocean seabed and therefore unilateral mining is permitted, it would be very hard for that state to maintain the right to be selective. For example, I've heard some representatives of highly industrialized states say that "Oh well, if the Conference breaks down, then the freedom of the high seas applies even down where the freedom notion did not have much relevance to the deep ocean seabed". But the same people will say "Oh that is not the case with passage through international straits. There we like the new law. We do not like the old one there". Well, the other side will be picking and choosing too. I believe what will happen is that because no one can any longer take anyone to the International Court on the 12-mile limit, - that is international law now - without a doubt -

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customary international law, therefore, you have the potential problem of ships not previously affected. Anyone can now go out to 12 miles and thereby create a potential dispute without the Treaty to lay down the safeguard on passage through international straits.

Questioner: How about the Exclusive Economic Zone?

J.A.B. Well, there I think that is a worse problem. I am told by representatives of a significant number of countries that they can accept the economic zone as part of the compromise. For many of them it has involved real compromises in their national positions. But if the Conference fails to-churn, they would want a 50 mile or, as in many cases, a 200 mile territorial sea, and that plays havoc with the overriding requirement of freedom of navigation. With the seabed I think the mess would be worse. I'm giving you my purely personal views now. I am not trying to speak for the Canadian Government or anyone else. I believe that you would find some states passing legislation empowering their own entities or themselves, in effect, to go out and mine the deep ocean seabed. You would find reactions of various kinds from the Third World. Amongst the options that I know are being considered are International Court cases out of the possibility of organizing claim jumping activity. I do not mean hijacking, just making claims to the same areas. Anything to tie it up, because no one is going to invest money when title is unclear. There is also a little Working Group quietly working away, I am told,

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on a draft Treaty. It would not be a valid Treaty. It would be a moral Treaty that all of the Third World would support. I am told that it would be crucially important in order to try and bring in countries like Canada and Norway and Australia and those who are regarded as somewhere in the middle on some of these questions. That would be used as evidence of the new International Law, that the common maritime concept is no longer just a slogan, it is a rule of law. And of course that is another legitimate law making technique. It is called the Law-Making Treaty. We tried it ourselves after the failure of the 1960 Law of the Sea Conference. The British and ourselves together canvassed all the countries in the world, on the issue which seemed radical then, but does not in retrospect - acceptance of the six plus six formula. (Six mile territorial sea plus six mile fishing zone). Our whole intent was to create a Law-Making Treaty so that we could say "X number of countries have adopted this now therefore that does reflect international law". That broke down for peculiar reasons. They are not very relevant now but ultimately the USA felt it could not go along with it, short of a major Conference that settled a lot of other issues. It was decided that this was not a useful exercise from the USA point of view but a lot of work was done on it and that could happen again. It could be a way around the problem even if the Conference breaks down. But I am afraid that the momentum would have been lost and national interests would have been damaged and it would be impossible to put Humpty Dumpty together again.

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Questioner: [illegible]

J.A.I. I only mention it as a problem. It is a sticky point.

Questioner: [illegible]

J.A.F. Well, it is not so much of that sort. It's connected with the Kissinger offer at the Hotel Pierre, a bi-annual statement - that the first mining venture by the Enterprise would be financed. I guess Secretary of State Kissinger was making an offer on behalf of a number of us, but this was not clear at the time, because it would not be, in the USA which would fund. But it was not a suggestion that there would be simply a grant of money. It would be a combination of loans and some non-refundable advances with some undefined form of equity holding that would not really ever require return on investment or anything like that. But that has been crystalized now into competing points of view. We have not begun at this session to take up that issue; we are just about to. So I cannot tell [illegible]

Questioner: [illegible]

JAB Well, for one thing, we do not think it is clever to try and force the potential miners to do all the financing. It is particularly unwise for the Group of 77 to put that forward because some of them may be potential miners. We think that there will be other countries which will enjoy the benefits of the mining done by whoever does carry it out and that, if there are to be contributions by some sort by loans or by other means - non-refundable loans - then certainly all the developed countries should contribute, and maybe some developing also, as in some cases it is not too clear who is a developed and who is a developing country in this field. That is a slightly fuzzy answer but that is about all I can tell you at this moment. One of the issues is whether the financing would be up to 50% of the amount required or one third and the developed states have said only a third. The developing countries are saying that they want 50%.

Questioner: The cost of doing this mining now has zoomed phenomenally. I mean all the old figures are all thrown out the window. Where you were talking about a couple of hundred million dollars, now it's into the billions? The whole scheme now has almost priced itself out of the market. This is a huge venture.

JAB It is expensive. The latest estimates I have heard, mind you, continue to be eight hundred million to a billion

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per mine site which is a fair whack of money.

Q Do you think you'll be able to get that much out of it?

JAB Well, no one seems to question that. That is interesting in itself; the resources are there. That is known; and now the technology is there. The INCO consortium proved that out, and now it seems to be the case that there is also processing technology. One of the unresolved issues, you know, is transfer of technology, and we did achieve some progress on that in Geneva. For example, there was a new proposal - we had a hand in it - on transfer even of processing technology, which had simply been turned thumbs down on until Geneva. The Review Conference. That is a touchy one. We have not resolved that and we did not in Geneva. But I think we created the conditions for resolving it by the linkage of that question with others which will force more reasonable approaches on all concerned. There are some specific issues like this. Some aspects of the production ceiling. Will there be a floor as well as a ceiling? Well, in normal places, except perhaps in areas where very tiny people live, floors are quite a distance from the ceiling, but in the minds of some delegates here the two are almost synonymous and of course there will be no solution of that sort. I do not know whether I am talking shorthand to you, but if anybody proposes that there has to be a floor, based on a figure that is so high that it is not really a floor but is a ceiling, he will not find the land-based producers accepting it. That could be a very controversial

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issue. I think that there are solutions within reach. On that very question there was a list of seven problems which grew out of bilateral negotiations and were resolved on the spot in Geneva.

Q. You know you had eight or ten the last time before you started here the last time and then, you came down.

JAB As a matter of fact on the production ceiling when we were last here, it was not at all clear that some countries such as the EEC and Japan were willing to accept the concept of a production ceiling at all. Now they will not say "yes" and they will not say "no" but they are negotiating. At least, they are talking.

Q. Is there not a slowing down of the desire to go in for mining by companies?

JAB I am not sure because, for one thing, some of the nickel stockpiles have dried up as a result of the eight month strike in Sudbury. There is a much more general recognition now, even amongst the non-experts who tend to do much of the lobbying, that the nickel market is not going to keep zooming upwards at 6% per annum exponentially. That is accepted now. But what I think is happening is that, because of the conditions that already exist, we are hearing less hysterical statements that "we are going to be out there next year" and "we need the legislation this year" in various countries. (I am not talking about any one country.) Why that should be is difficult to say, but the facts are so obvious; people are not going to be out there till the late 80's

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and probably the early 90's. I do not see that as a slowing down because we have been saying consistently for years just that. You will find it in the records of what we have said, both with respect to the growth rate for nickel and the development of technology. So, what I sense, I hope, maybe it is wishful thinking, is a little less pressure, a little less hysteria concerning the need for unilateral action. I do not want to be any more specific than that because I never did believe that it was urgent or necessary. I understand that it would be helpful for internal corporate planning purposes but I do not see why that requires any nation state to take on the Third World plus Russia and China - and others - in a highly political dispute.

Q In the corporate section, they have to plan 25 to 50 years ahead anyway. They are doing it. That is being laid out. Did you mean to say that it does not have to be done next year?

JAB That is right.

Q The thing is on the overall Conference though you are working for a quality Treaty. I mean, I thought we wanted to get away from the idea that there is going to be a breakdown or failure if we do not accomplish this session. It is not better to say it is going to take as many sessions needed as we have to have to complete this task.

JAB That is by far better.

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[illegible] And go that line without [illegible]. If we do not do it here, you do it next year in Geneva and you come back here and you keep doing it.

JAE I could not agree with you [illegible].

But does anybody emphasize this? I try to do it in some stories but we are always getting into that "well if we do not finish the seabed this time, there is going to be a breakdown. Where is the breakthrough?"

JAE I could not agree with you more. I have always seen this as a long process. There are times when we have been optimistic enough to think that the next session will be the last one and a lot of people felt that way about this session. In talking with you the other day, I said I did not want to associate myself with that measure of optimism - although I thought the possibilities were now here in hand that we could complete the major negotiations at this session. But I agree with you. If it is disarmament or if it is GATT or anything else, such as MBFR negotiations, no one is saying "what did you do this time; it's a failure". Of course I am getting into something else; the influence that reports on the Conference have on Government, on academics, on the public. It is this situation that is closely related to the point that we were just discussing - unilateral legislation. If we were allowed the time, we would do a better job. If we are allowed too much time, maybe some of the sense of urgency would be lost and the

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delegates would not negotiate, as if they did not have much more time, but I'm not convinced that's the problem. I think it is far better to complete the process without any terrible pressure than to have it break down because there is a deadline set by unilateral action say from USA, Germany, Japan, France - that kind of thing. I do not like to see that kind of sword of Damocles hanging over the Conference. I have not heard much about it at this session. That is good news.

On the other hand, there is something else at work. Precisely because the Conference has been reported a failure so often (I am not pointing the finger at anybody, I'm just saying that is a fact of life) - people believe that the Conference is a continuing failure. You know; "What have you done this time? You broke up in Geneva". Twice reports have gone out that we had broken down without any agreement when we have produced new texts.

Questioner: That happened at previous sessions the same way?

J. A. Beesley: That's right. The story was already written in one case before the Conference ended.

... There is a certain advantage in the minds of some people in not having everything reported. I do not agree with that.

Questioner: Then why are they so secretive?

J. A. Beesley: Are they?

Questioner: Yes. You really have to dig for news.

J. A. Beesley: Well, you never have to dig with me.

Questioner: True, that's true.

J. A. Beesley: I do not see any reason to be secretive.

Questioner: But the majority of people are.

J. A. Beesley: Well, I do not know why. I cannot answer that because I even have been critical of the UN Secretariat occasionally for not giving out more meaningful information to people. It is useless to give a few generalizations. But on the other hand, you all know as well as I do that to say anything that does mean anything you have to talk specifics, and they are intricate, they are complicated; they are not beyond anyone's intellectual capacity, but they may be beyond people's patience. I do not think we have done anything like the job we should have done in the Conference in terms of ensuring accurate press coverage.

Questioner: That is one of the very very weak points. You are about the first person actually that really goes into it. You do not get it from the US guys.

Questioner: They argue that since they are negotiating, they cannot say too much to the press.

J. A. Beesley: But then you can just never decline to say anything. I do not believe that. I believe that I have to refrain from saying something on some issues, as I did a moment ago, because merely to outline the nature of a possible agreement might indicate that I think that it is a winner, and that might make it harder for me to sound lukewarm on it until the last moment. We do not really play games, but it is a very hard-nosed hard-bitten negotiation that is going on, involving real national interests.

I did not finish what I was saying about the consequences of success or failure of the Conference. We could

end up with something that will be a law-making Treaty at least as important as the Charter - many people say more important, many people outside the Conference. It would end up with a lovely prescription for chaos, disputes, the kinds of disputes we have not even dreamed of, because I do not know what is going to go on out there in the deep ocean bed but I do not like to think about it. I can guess what will go on with respect to boundary disputes, because people will say "oh no, the law is what was in the Geneva Convention". The other side will say "oh no, the law is this new mysterious one that never quite got blessed by the Conference" and so on down the line. Some will say a territorial sea beyond 12 miles is illegal; others will say "oh no, we have always said that we are only making a concession from 200 to 12 provided there was an overall package solution". Of course, everybody has said that on everything, and so there is a real validity to the point of view that if the Conference breaks down all bets are off, but on the other hand what you cannot retrace, what you cannot retract, is what has already evolved into state practice and is therefore customary international law.

We all talk as if international law does not exist. There is a fantastic range, a real interlocking network, of Treaties that do govern relations between states. States find it more convenient to work within legal rules than otherwise, for obvious reasons, especially as we get more interdependent. We are all conscious of the breaches, whether it is refugees in Vietnam or the China border incidents, just as we are conscious

every morning domestically of the murders that are reported. But we are not so conscious of this underlying legal structure which is growing all the time on the international plane.

Questioner: If the Conference broke down today, what would be the law?

J.A. Beesley: I think I could make a very good living just giving answers to that, for a fee, because no one could say for sure.

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